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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/721,808	11/25/2003	Antony J. Lozier	ZIM0143	6206

43963 7590 07/25/2006

ZIMMER TECHNOLOGY - BAKER & DANIELS
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FORT WAYNE, IN 46802

EXAMINER

HOFFMAN, MARY C

ART UNIT	PAPER NUMBER
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3733

DATE MAILED: 07/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/721,808	Applicant(s) LOZIER ET AL.	
	Examiner Mary Hoffman	Art Unit 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) 15, 25 and 27-31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14, 16-24 and 26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>5/23/2005</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of Group I, species A, claims 1-14, 16-24 and 26, in the reply filed on 4/24/2006 is acknowledged.

Claims 15, 25 and 27-31 withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention/species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 4/24/2006.

Specification

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure is objected to because it is over 150 words.

Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-6, 13-14 and 16-24 and 26 are rejected under 35 U.S.C. 102(e) as being anticipated by Chappuis et al. (U.S. Application 10/052,096, refer to related U.S. Patent No. 6,814,734 for exact column and line numbers of cited text below).

Chappuis et al. a reamer comprising a shank (ref. #26), a reamer body having a longitudinal axis, and a blade (ref. #30, 32 plus deformation means, i.e. "a spring or spring like device"- not shown, discussed in col. 6, lines 49-51) formed in the reamer body, the blade capable of being deformed between a contracted position and an expanded position. The shank has a radius measured from the longitudinal axis, the blade in the contracted position extending no further from the longitudinal axis than the radius of the shank. The shank has a radius measured from the longitudinal axis, the blade in the expanded position extending further from the longitudinal axis than the radius of the shank. The blade in the contracted position is substantially parallel to the longitudinal axis. The blade in the expanded position comprises a portion oriented radially outward from the longitudinal axis. The blade comprises at least one deformation point, meaning that the blade has a point at which the blade is capable of

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being deformed. The reamer further comprises an actuating means (ref. #24, col. 5, lines 49-50) for moving the blade between the contracted position and the expanded position. The shank (ref. #26) is cannulated and the actuating means comprises an elongate member connected to the blade, proximate translation of the elongate member moving the blade from the contracted position to the expanded position, and distal translation of the elongate member moving the blade from the expanded position to the contracted position. The blade is biased to the expanded position and is collapsible to the contracted position upon application of a radially inward force upon the blade, and that the biasing force urging the two blades outwards is due to "a spring or spring like device". (col. 6, lines 46-51). The reamer body comprises a shaft having a polygonal cross-section, an edge of the blade being coincident with an apex formed by two adjacent sides of the polygonal reamer body (FIG.1 marked-up copy).

Fig. 1

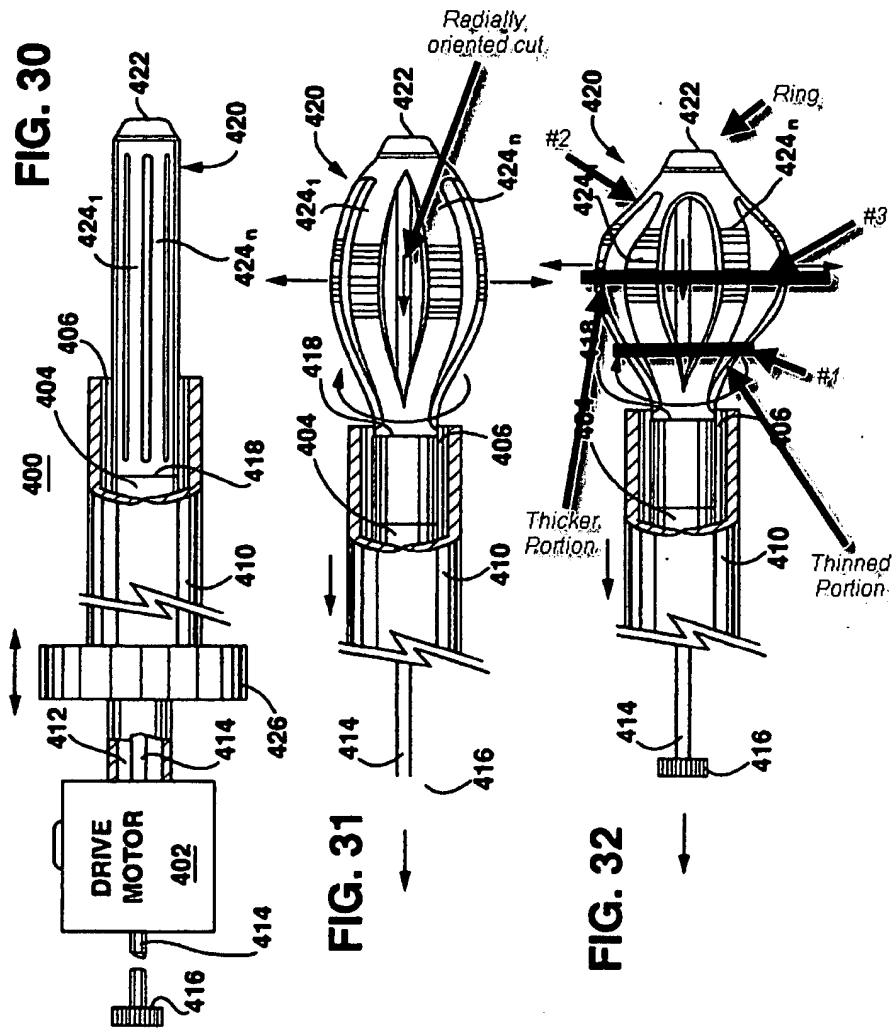
Claims 1-11, 13-14, 16-21, 23-24 and 26 are rejected under 35 U.S.C. 102(e) as being anticipated by Cragg et al. (WO 01/60262), cited by applicant.

Cragg et al. disclose reamer comprising a shank (ref. #406), a reamer body (ref. #420) having a longitudinal axis, and a blade (ref. #424) formed in the reamer body, the blade deformable between a contracted position and an expanded position. The shank has a radius measured from the longitudinal axis, the blade in the contracted position extending no further from the longitudinal axis than the radius of the shank. The shank

has a radius measured from the longitudinal axis, the blade in the expanded position extending further from the longitudinal axis than the radius of the shank. The blade in the contracted position is substantially parallel to the longitudinal axis. The blade in the expanded position comprises a portion oriented radially outward from the longitudinal axis. The blade comprises at least one deformation point (see middle portion of ref. #424). The at least one deformation point comprises an exterior circumferential relief (see #1 in marked-up copy below). The exterior circumferential relief is formed in a proximate end of the blade, the reamer further comprises a ring (ref. #422) coupled to a distal end of the blade, and the at least one deformation point further comprises an exterior circumferential relief formed in the distal end of the blade (see #2 in marked-up copy below). The at least one deformation point comprises at least one interior circumferential relief formed in the blade between the proximate end and the distal end (see #3 in marked-up copy below). The deformation point of the reamer can also be considered as the slits between ref. #'s 424, i.e. the at least one deformation point comprises a radially oriented cut in the blade. The at least one deformation point comprises a thinned region (see the diameter of #1 and #2 in the marked-up copy below relative to the thicker portion denoted by #3). Moreover, on page 26 of the specification, lines 11-12, the reference discloses that the blades can be made in any shape. Therefore, this would include the basic hourglass shape, and a blade of this shape would meet the limitations as currently set forth in the claims. The reamer of further comprises an actuating means (ref. #404) for moving the blade between the contracted position and the expanded position. The shank is cannulated and the actuating means

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comprises an elongate member connected to the blade, proximate translation of the elongate member moving the blade from the contracted position to the expanded position, and distal translation of the elongate member moving the blade from the expanded position to the contracted position. The blade is biased to the expanded position and is collapsible to the contracted position upon application of a radially inward force upon the blade. The deformation means for deforming the blade between a contracted position is by the relative movement of the components.



Conclusion


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See attached PTO-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mary Hoffman whose telephone number is 571-272-5566. The examiner can normally be reached on Monday-Friday 9:00-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo C. Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MCH



EDUARDO C. ROBERT
SUPERVISORY PATENT EXAMINER